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ECF FILED ON 10/13/16

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re:

**CHARLES B EASLEY, and
PATRICIA A. EASLEY**

Debtors.

Case No. 2:15-cv-00395-LDG

BK-S-12-22239-GS

CHARLES B. EASLEY SR. et al,

Appellants,

vs.

COLLECTION SERVICE OF NEVADA,

Appellee.

MOTION FOR ATTORNEY FEES AND COST FOR APPELLATE WORK

COMES NOW, Christopher P. Burke, Esq. ("Burke"), for Debtors/Appellants, Charles B. Easley, Sr., and Patricia A. Easley ("Easley") in seeking attorney fees and costs against Appellee, Collection Service of Nevada ("Collection Service") for work on this appeal.

**I
Argument**

A. The Easleys are entitled to have Burkes attorneys fees paid by Collection Services for this appeal

As this Court noted, the Bankruptcy Court limited Burkes attorney fees based upon *Sternberg v. Johnson*, 595 F.3d 937 (9th Cir. 2010). However, this Court also noted that while this appeal was pending the Ninth Circuit reversed *Sternberg* in the case of *In re*

1 *Schwartz-Tallard*, 803 F.3d 1095, 1101 (9th Cir. 2015). Burke was the Debtors attorney in
 2 *Schwartz-Tallard*. After that decision, the Ninth Circuit allowed Burke to file a fee
 3 application under 11 USC §362(k) that included all of the appellate work in that case.
 4 (Dkt.#76). Thus, Burke seeks to have this Court allow and approve his motion for attorney
 5 fees for this appeal.

6 **B. Lodestar method.**

7 In the Ninth Circuit, the proper method for determining reasonable attorneys' fees
 8 is to use the "lodestar method." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Jordan v.*
 9 *Multnomah Cnty.*, 815 F.2d 1258, 1262 (9th Cir. 1987). Under this method, the trial court
 10 calculates attorneys' fees by multiplying the number of hours reasonably spent by counsel
 11 by a reasonable hourly rate. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir.1996).
 12 As the Ninth Circuit has held, the opposing party "has the burden of rebuttal that require
 13 submission of evidence . . . challenging the accuracy and reasonable of the hours charged
 14 or the facts asserted . . .". *Gates v. Deukmejian*, 987 F.2d. 1392, 1405 (9th Cir. 1992).

15 **C. Burke is experienced.**

16 As for Burkes experience, he is licensed in four states. In addition, to a J.D., he has
 17 an LLM. Further, Burke has been involved in approximately 10,000 bankruptcy cases over
 18 the past 25 years, more then 100 adversary and evidentiary hearings, and close to 100
 19 appeals. In addition, Burke has been part of more than 40 published bankruptcy decisions.
 20 Including, arguing one case at the U.S. Supreme Court *In re Ransom*, 131 S. Ct. 716 (2011).
 21 Finally, Burke has also spoken at every national bankruptcy organization in the country,
 22 including the National Association of Consumer Bankruptcy Attorneys (NACBA), American
 23 Bankruptcy Institute (ABI), and the National Association of Chapter Thirteen Trustees
 24 (NACTT). (Ex. 'A' Decl. C. Burke).

25 An attorneys hourly rate is determined by examining the prevailing market rates in
 26 the relevant community charged for similar services by "lawyers of reasonably comparable
 27 skill, experience and reputation." *Hensley*, 461 U.S. at 433; *Blum v. Stevenson*, 465 U.S.
 28 886, 895 n. 11 (1984); *Davis v. City and Cnty. of San Francisco*, 976 F.2d 1536, 1545-46 (9th

1 Cir.1992). Burke is seeking a hourly rate of \$500 for these appeals. This rate has been
2 approved for him in the past year by at least two Nevada Bankruptcy Court judges (*see In*
3 *re McCabe* to BK-S-13-15602 [Dkt.#411])(Decl. C. Burke).

4 As such, if this motion is granted, Burkes entire amount of attorney fees and costs
5 should be approved. Here, the hours spent on this appeal have totaled 26.1. Based upon
6 Burke's hourly rate of \$500, his attorney fees are \$13,050. In addition, the costs totaled
7 \$1,158.75 for a total amount of \$14,208.75.

8 In the alternative, this Court can order a remand of this motion to the Bankruptcy
9 Court for it to determine the amount of attorney fees for this appeal.

10
11 **II**
12 **Conclusion**

13 The Easley's attorney fees and costs of \$14,208.75 should be granted in full.

14 Dated this 13th day of October, 2016.

15 RESPECTFULLY SUBMITTED:

16 /S/CHRISTOPHER P. BURKE, ESQ.
17 CHRISTOPHER P. BURKE, ESQ.
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ATTORNEY SERVICES RENDERED

Attorney Rate: \$500.00

Date	Time	Description of Services
3/4/15	.1	Prepare Notice of appeal. CPB
3/30/15	.1	Prepare Certificate of Interested Parties. CPB
4/08/15	.1	Reviewed minute order. CPB
4/15/15 to 4/27/15	12.8	Writing, re-writing brief, research on stay violations and recent case law, shepardizing, reading the evidentiary transcripts, coordinating citations to the record, and updating client on appeal. CPB [4/15/15 - 3.9 hrs; 4/16/15 - 1.8 hrs.; 4/17/15 - 1.4 hrs.; 4/20/15 - .8 hrs; 4/22/15 - .9 hrs.; 4/26/15 - 1.6 hrs.; 4/27/15 -2.4 hrs.]
4/20/15 to 4/27/15	3.1	Prepare Exhibits for Appeal. CPB
4/28/15	.1	Review Notice of Appearance by Attorney Amy N Tirre. CPB
5/1/15	.6	S/w clients. CPB
5/12/15	.9	Review Answering Brief. CPB
5/19/15 to 6/01/15	6.4	Prepare, write and re-write, Reply Brief, check citations, shepardize cases. CPB [5/19/15 - 2.3 hrs.; 5/22/15 - 1.2 hrs.; 5/26 - .6hrs.; 5/29/15- .9 hrs.; 6/1/2015 - 1.4hrs.]
10/5/15	.4	Meet w/clients re: status of appeal. CPB
10/19/15	.1	Prepare a FRAP 28j Letter of Supplemental Authority re: Schwartz-Tallard. CPB
10/23/15	.1	Review Response to Supplemental Authority. CPB

1 9/30/16 .2 Read Order by District Court. CPB
 2 10/3/16 .3 Meet w/clients re: appeal and order. CPB
 3 10/14/16 .7 Prepared and filed Motion for Attorney fees and costs. CPB
 4

5 Total Attorney Time:..... 26.1
 6 Total Attorney Fees:..... \$13,050
 7 Copying, Postage, Pacer:..... \$49.65
 8 Filing fee:..... \$255
 9 Transcript..... \$182.50
 10 Transcript..... \$558.45
 11 Transcript..... \$113.15
 12 Total Fees:..... \$14,208.75
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CERTIFICATE OF MAILING

I hereby certify that on the 13th day of October, 2016 I caused to be sent the above and foregoing MOTION FOR ATTORNEY FEES AND COST FOR APPELLATE WORK to be sent by electronic notice and/or depositing same in the United States Mail, first class, postage prepaid, in a securely sealed envelope and addressed to the last known address of the following;

U.S. District Court
333 Las Vegas Blvd. S.
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(sent electronic notice)

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Attorneys for Appellee:
Collection Services of Nevada
(sent electronic notice)

/S/ Adriana Pelayo
Employee of
Christopher P. BURKE,